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28
1 UNITED STATES DISTRICT COURT
2
3 CENTRAL DISTRICT OF CALIFORNIA
4
5 SOUTHERN DIVISION

6
7 ENTROPIC COMMUNICATIONS,
8 LLC,

9 Plaintiff,

10 v.

11 COX COMMUNICATIONS, INC.;
12 COXCOM, LLC; and COX
13 COMMUNICATIONS CALIFORNIA,
14 LLC,

15 Defendants.

16 LEAD CASE:
17 Case No. 2:23-cv-1043-JWH-KES

18 RELATED CASE:
19 Case No. 2:23-cv-1047-JWH-KES

20 **COX DEFENDANTS' RESPONSE TO**
21 **MAXLINEAR'S MOTION TO**
22 **DISMISS COUNTERCLAIMS**

23
24 **REDACTED DOCUMENT SOUGHT TO BE SEALED**

1 COX COMMUNICATIONS, INC.,
2 COXCOM, LLC, AND COX
3 COMMUNICATIONS CALIFORNIA,
LLC,

4 Counter-Claimants,

5 v.

6 ENTROPIC COMMUNICATIONS,
LLC; MAXLINEAR
7 COMMUNICATIONS LLC; AND
MAXLINEAR, INC.

8 Counter-Defendants

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1 **I. INTRODUCTION**

2 These counterclaims arise out of the fact that the original owners of the asserted
3 patents—MaxLinear Communications LLC and MaxLinear, Inc. (“MaxLinear”)—
4 were signatories to, founders of, and/or participants in MoCA. As a result, the MoCA
5 IPR Policy contractually bound MaxLinear, requiring each entity to ensure that they
6 had the ability to offer and negotiate licenses on “RAND” terms to any patents with
7 claims that may be essential to the MoCA standards. Cox, as a former member of
8 MoCA, was a beneficiary of those contractual obligations. Plaintiff’s Complaint
9 asserts that Cox infringes the patents it acquired from MaxLinear because those
10 patents are essential to MoCA standards. MaxLinear has, accordingly, breached its
11 obligations under the MoCA IPR Policy, including by transferring the asserted patents
12 to Plaintiff in ways that violate the IPR Policy. Cox thus asserted against MaxLinear
13 claims for breach of contract, unjust enrichment, and declaratory judgment as to the
14 propriety of the assignments, as well as a tortious interference claim against Entropic.¹

15 MaxLinear received enormous benefits from promoting MoCA standards over
16 alternative technologies. It was able to develop, deploy, and market MoCA-compliant
17 equipment. It learned about draft specifications and participated in meetings to discuss
18 and understand future development of cable industry technology. It successfully
19 enticed industry participants to adopt MoCA, including by making false and
20 misleading representations concerning its commitment to retaining rights to grant
21 RAND licenses, and otherwise ensuring such obligations would always be strictly
22 recognized by and imposed upon future assignees. These actions led to Cox’s claims.

23 MaxLinear’s objections are without merit. While MaxLinear has not—and
24 cannot—make any objection to Cox Communications, Inc.’s claims, it asserts that
25 CoxCom and Cox California were never MoCA members and lack standing. That is
26 incorrect; as implementers and affiliates of Cox Communications, those entities were

27 ¹ Entropic separately moved to dismiss this Count. Cox incorporates by reference the
28 general summary of its counterclaims set forth in its response to that motion. *See Cox
Defendants’ Response to Entropic’s Motion to Dismiss Cox’s Counterclaims*, CA No.
2:23-cv-1043-JWH-KES, at § II.

1 beneficiaries of the IPR Policy and any RAND license thereunder. MaxLinear next
2 asserts that Cox never “properly” sought a RAND license from Entropic. That is both
3 incorrect and irrelevant given the IPR Policy, which squarely applies here.

4 MaxLinear makes further novel, and meritless, standing and ripeness
5 arguments. It claims there’s no standing because “reversing the transaction does not
6 change the ‘injury.’” (DE 335 at 10). Yet Cox’s pleadings establish that the IPR Policy
7 plainly required developers of the standard to maintain the power to grant licenses
8 precisely to avoid a situation such as this case presents. Entropic, as a stranger to
9 MoCA, simply cannot step into MaxLinear’s shoes under the requirements of the IPR
10 Policy. Indeed, the IPR Policy absolutely forbid the assignments used to transfer the
11 patents to Entropic. The injury flowing from MaxLinear’s breach that allowed
12 Entropic, a patent monetization entity that seeks to maximize its damages claims by
13 avoiding its RAND obligations, to pursue this suit is apparent. Nor is “ripeness” any
14 bar to Cox’s breach claims, as is apparent from the multitude of courts that have
15 entertained similar claims.

16 MaxLinear’s “alternative” Rule 12(b)(6) arguments fair no better. They simply
17 ignore Cox’s actual averments, which detail how MaxLinear’s transfer of the patents
18 to Plaintiff breached the IPR Policy, and MaxLinear’s efforts to dismiss those claims
19 on pleading grounds necessarily fail. Cox appropriately pled the relevant contractual
20 terms, its performance, breach, and injury. And, contrary to MaxLinear’s assertion,
21 California does, in fact, recognize actions for unjust enrichment and Cox’s claim for
22 same is more than sufficient. So too is Cox’s declaratory judgment claim. The
23 counterclaims flow directly from promises to MoCA that MaxLinear breached, are
24 more than sufficiently pled, and need to be resolved now.

25 **II. LEGAL STANDARD**

26 Motions to dismiss for failure to state a claim are disfavored, *Gilligan v. Jamco*
27 *Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997), and 12(b)(6) dismissals are proper
28 only in “extraordinary” cases. *United States v. City of Redwood City*, 640 F.2d 963,

1 966 (9th Cir. 1981). “A complaint should not be dismissed unless it appears beyond
2 doubt that the plaintiff can prove no set of facts in support of the claim that would
3 entitle the plaintiff to relief.” *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002).
4 Indeed, if the Court finds that a pleading fails to state a claim, the Court should grant
5 leave to amend unless the pleading cannot be cured by the allegation of other facts.
6 *See Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995).

7 Federal Rule 8(a)(2) “requires only a plausible ‘short and plain’ statement of
8 the plaintiff’s claim showing that the pleader is entitled to relief,” which requires that
9 the complaint “‘give the defendant fair notice of what the . . . claim is and the grounds
10 upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To
11 survive a motion to dismiss, a complaint need merely plead “enough factual matter”
12 that, when taken as true, “state[s] a claim to relief that is plausible on its face.” *Id.* at
13 570; *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). This plausibility standard is met
14 when “the plaintiff pleads factual content that allows the court to draw the reasonable
15 inference that the defendant is liable for the misconduct alleged,” and does not require
16 a “probability” of liability. *Iqbal*, 556 U.S. at 678 (internal quotations omitted).

17 In deciding a motion to dismiss, this Court must credit all factual (but not legal)
18 assertions made in the complaint, draw all reasonable factual inferences in favor of
19 Cox, and use those factual assertions and inferences to determine whether Cox is
20 plausibly entitled to relief. Fed. R. Civ. P. 8(a), 12(b)(6); *In re Tracht Gut, LLC*, 836
21 F.3d 1146, 1150-51 (9th Cir. 2016); *Maya v. Centex Corp.*, 658 F.3d 1060, 1068 (9th
22 Cir. 2011). Dismissal is proper only where there is a “lack of a cognizable legal theory
23 or ... [an] absence of sufficient facts alleged under a cognizable legal theory.” *Tracht*
24 *Gut*, 836 F.3d at 1151.

25 Here, under the correctly applied standards, Cox’s counterclaims comply with
26 the Federal Rules and provide the requisite notice of Cox’s claims.

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1 **III. ARGUMENT**

2 **A. Cox Has Standing to Assert Claims that Are Ripe**

3 MaxLinear makes meritless standing and ripeness objections to Cox's
4 counterclaims. As this Court explained in *Safari v. Whole Foods Market. Services.,*
5 *Inc.*, "injuries that have a close relationship to harms traditionally recognized 'as
6 providing a basis for a lawsuit in American courts' may be considered 'concrete for
7 purposes of Article III [].'" 2023 WL 5506014, at *5 (C.D. Cal. July 24, 2023)
8 (alteration in original) (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424
9 (2021)), reconsideration denied, 2023 WL 8269774 (C.D. Cal. Oct. 10, 2023)).
10 *TransUnion*, in fact, instructs that judges should look to "history and tradition" as a
11 "guide to the types of cases that Article III empowers federal courts to consider." 594
12 U.S. at 424 (citation omitted). Such an inquiry considers "whether plaintiffs have
13 identified a close historical or common-law analogue for their asserted injury." *Id.*

14 Breach of contract actions are, of course, quintessential common-law analogues
15 and precisely the type of actions that confirm standing. *See, e.g., Spokeo, Inc. v.*
16 *Robins*, 578 U.S. 330, 344 (2016) (Thomas, J., concurring) ("Historically, common-
17 law courts possessed broad power to adjudicate suits involving the alleged violation
18 of private rights, even when plaintiffs alleged only the violation of those rights and
19 nothing more.... 'Private rights' have traditionally included ... contract rights."
20 (citation omitted)). Although never actually challenged by MaxLinear, Cox's claims
21 for unjust enrichment and declaratory relief likewise present the kind of claims that
22 identify concrete injuries capable of redress. MaxLinear's arguments are meritless
23 and should be dismissed.

24 **1. CoxCom and Cox California Have Standing**

25 MaxLinear urges that CoxCom and Cox California, the "Cox Affiliates" of
26 Cox Communications, "lack standing because the IPR Policy does not provide rights
27 to 'Affiliates' of Alliance Party members." (DE 335 at 15-16). MaxLinear reasons
28 that the Cox Affiliates have no injury because they have no "legal right to a RAND

1 license – or expectation thereof.” (*Id.* at 16).

2 Tellingly, MaxLinear effectively concedes—as it must—that Cox
3 Communications, as the former “Alliance Party,” has the right and privilege to
4 demand a RAND license. Critically, neither the IPR Policy nor the Promoter
5 Agreement prevent Cox Communications from demanding, as it has through its
6 counterclaims, a RAND license on behalf of the Cox Affiliates. To the contrary, the
7 IPR Policy states its objective “to maximize the likelihood of widespread adoption of
8 [the MoCA] specifications,” which necessarily encompasses having Alliance Parties
9 receive licenses on behalf, and for the benefit, of their affiliates. (DE 266-1, ¶ 541
10 (citing IPR Policy, at 1)). Moreover, the very definition of the “RAND” obligation
11 requires license on “fair, reasonable and non-discriminatory terms and conditions.”
12 (*Id.*; IPR Policy, § 5.1.1). The IPR Policy further declares that it “is designed and
13 intended to comply with all applicable law, including all federal and state antitrust
14 laws.” As the Ninth Circuit has declared, a RAND agreement’s main “purpose … is
15 to promote adoption of a standard by decreasing the risk of hold-up,” without which
16 implementers would be subject to a “flood of litigation” that would “discourage”
17 standard adherence. *Microsoft Corp. v. Motorola, Inc.*, 795 F.3d 1024, 1052 (9th Cir.
18 2015); *see also Realtek Semiconductor Corp. v. LSI Corp.*, 2012 WL 4845628, at *1
19 (N.D. Cal. Oct. 10, 2012).

20 These provisions of the IPR Policy, the counterclaims, and the underlying
21 meaning of a “non-discriminatory” license support the expectation, injury, and
22 standing of the Cox Affiliates. The counterclaims show the Cox Affiliates were
23 MoCA users (DE 266-1, ¶¶ 551-54), which means they were entitled to receive a
24 RAND license, even if via the mechanism of Cox Communications invoking its rights
25 and privileges as an Alliance Party. Because of MaxLinear’s breaches, the Cox
26 Affiliates suffered the injury of being subjected to Entropic’s demands and claims,
27 and the remedy they seek is to “receive an appropriate license on FRAND terms from
28 MaxLinear, and only MaxLinear.” (DE 266-1, ¶ 579).

Finally, MaxLinear’s entire standing argument as to the Cox Affiliates is irrelevant to Counts II and IV, and MaxLinear made no arguments to the contrary. Count II relies on MaxLinear’s breaches of its MoCA agreement to seek a declaration that the assignments to Entropic were void. Count IV focuses on MaxLinear’s false and misleading representations that secured it multiple benefits whose retention would be unjust. Nothing about these claims hinge on the Cox Affiliates’ status as “Alliance Members.” Likewise, the fact that the Cox Affiliates are defending a claim from Entropic under patents transferred via a void assignment, while MaxLinear retains benefits conferred unjustly, shows injury and ripeness.

2. Cox's compliance with the IPR Policy is established and, in any event, presents no standing or ripeness issue

Standing and ripeness fundamentally seek to ascertain whether the type of claim and injuries pled are sufficient and redressable for Article III purposes. These questions have nothing to do with the factual points MaxLinear raises, which are incorrect. To begin, MaxLinear admits that Cox averred that Entropic had neither provided nor procured a RAND offer “despite Cox’s prior request in writing.” (DE 335 at 16 (citing (DE 266-1, ¶ 571))). That averment alone disposes of MaxLinear’s complaints.

MaxLinear nonetheless incorrectly claims that the details of the timing and identities of Cox’s written request are both defective and crucial to the standing and ripeness challenges it mounts. Neither Fed. R. Civ. P. 8 nor Article III requires such details. Even so, MaxLinear is factually wrong. Its claim that the Cox entity making the RAND request must be identified given its challenge to the Cox Affiliates’ standing is defective for the reasons discussed *supra*. Additionally, Cox made written requests, including in their amended answer that originally raised its defense (DE 48 ¶¶ 511, 513), the original counterclaims (DE 95), and in Cox Communications’ written correspondence referenced in the Amended Counterclaims at paragraph 571, provided to MaxLinear before its motion and referenced in Entropic’s motion to

1 dismiss. (DE 329-4).² Thus, MaxLinear's assertions are entirely meritless.

2 Indeed, MaxLinear's very assertion that Cox must make a "written" request for
3 a RAND license is wrong. As MaxLinear admits, Section 5.1.1 requires a RAND offer
4 "upon the written request of any ***other then-current Alliance Party***." (DE 335 at 17
5 (citing IPR Policy, 5.1.1 (emphasis added))). But paragraph 522 of the Amended
6 Counterclaims explains that Cox joined MoCA in 2005 and left in July 2022. Thus,
7 when Cox presented these claims, Cox was not a "then-current Alliance Party,"
8 having ceased its participation in MoCA. Section 7.1 is thus the operative provision;
9 it does not specify a "written" request, but instead says Cox may "request or require"
10 an appropriate RAND license. (DE 266-1, ¶ 541; IPR Policy, § 7.1.1). Cox met those
11 provisions simply by asserting its defenses and claims. *See, e.g.*, (DE 48; DE 95; DE
12 266-1).

13 Second, MaxLinear purports that Cox had to, but did not, plead the timing of
14 the draft or approved deliverables. Both propositions are incorrect. The counterclaims
15 plausibly establish that Cox is entitled to a RAND license because the IPR Policy
16 applies to the relevant patents in view of Plaintiff's averments. (*See* DE 266-1, ¶¶
17 545-46, 554-55, 563-64). Neither standing, nor any other doctrine MaxLinear recites,
18 requires Cox's averments trace the history of each draft deliverable as it was
19 converted to a relevant standard. To the contrary, Cox's averments satisfy Fed. R.
20 Civ. P. 8, are taken as true, and show the relevant patents plausibly are encumbered
21 by the IPR Policy.

22 In any event, the counterclaims answer MaxLinear's timing complaints.
23 Paragraph 563 expressly references "Plaintiff's Complaint" and avers that based on
24 same "one or more of the Asserted Patents reasonably may contain essential patent
25 claims ... subject to the IPR Policy." This alone suffices as a matter of law. More

26 ²As MaxLinear admits in its request for judicial notice (DE No. 323 at 3-4),
27 documents referenced in the pleadings must be considered part of same for a motion
28 to dismiss. *Sandow Fred Segal, LLC v. Cormackhill, LP*, 2017 WL 5714542, at *3
(C.D. Cal. Apr. 6, 2017). Accordingly, the written correspondence referenced in the
counterclaims and provided to MaxLinear in discovery is part of the pleadings and
likewise demonstrates MaxLinear's arguments are without merit.

1 specifically, Plaintiff's Complaint avers MoCA ratified the MoCA 1.0, 1.1 and 2.0
2 standards in 2006, 2007 and 2010 respectively (DE 1, ¶ 28), then avers that Cox uses
3 MoCA 1.0, 1.1 and 2.0, and accuses Cox of infringing the relevant patents because it
4 practices those standards. (DE 266-1, ¶ 563 (citing DE 1, ¶¶ 109, 143, 177, 211, 245,
5 279, 313, 347, 381, 415, 449, 483)). Given Cox's averment that it left MoCA in 2022,
6 these averments show that the relevant standards meet the IPR Policy provisions
7 MaxLinear cites. Additionally, the counterclaims directly quote the relevant
8 confidential standards that MaxLinear gave Entropic in breach of its MoCA
9 obligations. (DE 266-1, ¶ 546). MaxLinear, of course, already has these documents,
10 the reference to them in the counterclaims makes them part of the pleadings (*supra*,
11 n.1), and the documents independently show the relevant standards were adopted
12 before Cox left MoCA. (DE 329-4 at 3).

13 Finally, MaxLinear incorrectly argues that Cox did not aver that Entropic failed
14 to negotiate in good faith and claims that such failure "is no indicia of MaxLinear's
15 alleged failings to encumber its patents." (DE 335 at 18). First, Cox flatly alleged that
16 Plaintiff never "provided or procured any RAND-compliant offer." (DE 266-1, ¶
17 571). That is necessarily bad faith, particularly given the additional averments
18 showing efforts to strip the patents of any RAND encumbrance. (*Id.*, ¶¶ 556-573).
19 Second, MaxLinear just ignores Cox's entire pleading, which explains how the
20 MoCA IPR Policy required *MaxLinear* to maintain the right to grant licenses and
21 mandated that MaxLinear could only transfer by providing notice of such
22 requirements in the transfer agreement (*id.*, ¶¶ 540-550), yet those provisions were
23 breached. (*Id.*, ¶¶ 556-567). At this stage, those averments are taken as true and
24 establish *MaxLinear's* breach.

25 **3. Cox's Averments Establish Redressable, Concrete and
26 Particularized Injuries**

27 Next, MaxLinear claims that Cox has failed to show a concrete and
28 particularized injury capable of redress. This is both factually and legally incorrect.

1 Factually, Cox suffered direct harm from the promises that MaxLinear
2 breached. For entirely well-justified reasons, the IPR Policy promised that Cox would
3 only have to deal with MaxLinear in terms of obtaining any applicable license for
4 essential patents. (DE 266-1, ¶¶ 538-50). It included multiple enforcement
5 mechanisms to ensure that any subsequent owner of a MaxLinear essential patent
6 would be aware of, and bound by these provisions. (*Id.*, ¶¶ 548-50). Cox avers that
7 the violation of MaxLinear’s promises resulted in a void assignment to Entropic—
8 which invalid assignment ultimately led to Entropic improperly asserting its patents
9 and ultimately filing this very suit, depriving Cox of the benefits of MaxLinear’s
10 promises. (*Id.*, ¶¶ 556-73). The harms that flow from MaxLinear’s breaches are
11 precisely the ones that courts have recognized to represent the concrete and
12 particularized injury required. *See, e.g., HTC Corp. v. Telefonaktiebolaget LM*
13 *Ericsson*, 2018 WL 6617795, at *4-5 (E.D. Tex. Dec. 17, 2018) (finding deprivation
14 of contractual right to FRAND license supported existence of injury in fact).

15 Nowhere does MaxLinear address these harms. That is a fatal flaw. Contract
16 actions over breaches that involve only nominal damages present injuries that confer
17 standing. For example, *In re Facebook Priv. Litig.*, 192 F. Supp. 3d 1053, 1061 (N.D.
18 Cal. 2016), examined the split authority as to whether actual damages were even an
19 element of contract claims in California. Ultimately, the court held that injury in fact
20 was shown because plaintiffs could recover at least nominal damages, and had alleged
21 “concrete” injuries in the form of specifically breached contract terms applicable to
22 plaintiff. *Id.* at 1062. The counterclaims here identify the same sorts of concrete,
23 specific, and breached contractual terms.

24 Moreover, Cox’s averments show that it consistently performed its
25 obligations—paying “substantial monies” toward MoCA, voting on and supporting
26 adoption of MoCA standards and deploying MoCA via deployment of its “personnel
27 and other resources.” (DE 266-1, ¶¶ 552-55). In return, the IPR Policy promised that,
28 for parties like Cox that implement MoCA-compliant equipment, as to any licensing

1 of patents essential to MoCA, Cox would be negotiating with MaxLinear, the
2 “Alliance Party” who created those rights, founded, and participated in MoCA, not
3 some third party. (DE 266-1, ¶¶ 538-50). MaxLinear’s breach, however, deprives Cox
4 of the benefit of that bargain. This is precisely the type of harm that confers standing.
5 *See Williams v. Apple, Inc.*, 449 F. Supp. 3d 892, 903 (N.D. Cal. 2020) (finding
6 standing for “benefit of the bargain” losses where “Plaintiffs paid consideration for
7 Apple to store Plaintiff’s data”); *Facebook*, 192 F. Supp. 3d at 1058-59.

8 Independently, the counterclaims establish that MaxLinear was unjustly
9 enriched by its actions – which again is such a routine common law harm that
10 establishes standing that MaxLinear does not even argue otherwise. For example, *In*
11 *re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 599 (9th Cir. 2020),
12 addressed claims that Facebook’s tracking and collection practices resulted in various
13 common law and statutory violations. Facebook challenged plaintiffs’ standing,
14 arguing that “unjust enrichment is not sufficient to confer standing.” *Id.* The Ninth
15 Circuit held otherwise, explaining that “state law can create interests that support
16 standing in federal courts,” and, specifically, that “California law recognizes a right
17 to disgorgement of profits resulting from unjust enrichment, even where an individual
18 has not suffered a corresponding loss.” *Id.* (citation omitted). Facebook’s unjust
19 enrichment and standing were sufficiently shown by averments that plaintiffs’
20 browsing histories had financial value, and Facebook’s sale of such information
21 despite contrary representations. *Id.* at 600-01.

22 Here, Cox similarly averred that MaxLinear made representations and
23 guarantees concerning its ability to provide necessary licenses, which induced Cox
24 and others to deploy MoCA rather than alternate technologies, thereby earning
25 MaxLinear substantial revenues. (DE 266-1, ¶¶ 530-33, 551-55). Indeed, these
26 misleading representations allowed MaxLinear to participate in standards
27 development, and deploy and market MoCA-compliant equipment. (*Id.*, ¶¶ 588-90).
28 These actions further allowed MaxLinear to entice Cox and others to adopt and deploy

1 MoCA-compliant equipment with the expectation that no third party would make
2 claims under any of MaxLinear's essential patents. (*Id.*, ¶¶ 591-93). MaxLinear's
3 unjust enrichment from its misrepresentations accordingly provides standing, just as
4 in *Facebook*.

5 MaxLinear's obviously concerted effort to ignore Cox's actual pleadings alone
6 suffices to dismiss its standing arguments. MaxLinear's only other actual argument
7—that Cox's expenses of addressing Entropic's improper suit cannot support standing
8—is also incorrect. MaxLinear says *San Diego Unified Port Dist. v. Monsanto Co.*,
9 309 F. Supp. 3d 854, 866 (S.D. Cal. 2018), shows that litigation costs for defending a
10 plaintiff's claim do not establish standing for a counterclaim against that plaintiff.
11 However, *San Diego Unified Port District* cited to *Steel Co. v. Citizens for a Better*
12 *Env't*, 523 U.S. 83, 107 (1998), for the proposition MaxLinear advances, and *Steel*
13 *Co.* made plain that “a plaintiff cannot achieve standing to litigate a substantive issue
14 by bringing suit for the cost of bringing suit” because, in that case, the expenses
15 plaintiff sought were only reimbursable under the relevant environmental statute that
16 was being litigated. *Id.*

17 These rules are inapplicable. Standing here is not grounded on some recovery
18 by Cox from Entropic under, for example, 35 U.S.C. § 285, or even on Cox's recovery
19 of expenses defending some claim advanced by MaxLinear. Cox instead asserts a
20 breach of contract counterclaim not against Entropic, the plaintiff in this case, but
21 against MaxLinear, the third party whose breach of contract caused Entropic to assert
22 patents, demand royalties, and bring suit.

23 The costs of responding to Entropic's assertions count as Cox's damages for
24 MaxLinear's breach of contract. Courts have long recognized such expenses are
25 contractual damages under these circumstances. *Copenbarger v. Morris Cerullo*
26 *World Evangelism, Inc.*, 239 Cal. Rptr. 3d 838, 844-847 (2018), for example,
27 addressed whether attorneys' fees incurred in defending an action brought in breach
28 of a settlement agreement constituted damages for purposes of the breach of contract

1 claim. *Copenbarger* expressly held that under *Brandt v. Superior Court*, 693 P.2d 796
2 (Cal. 1985), “the principle that attorney fees qua damages are recoverable as damages,
3 and not as costs of suit, applies equally to breach of contract.” 239 Cal. Rptr. 3d at
4 845; *see also Lee v. Hum. Biostar, Inc.*, 2013 WL 12130258, at *2 (C.D. Cal. Jan. 28,
5 2013) (finding breach of contract counterclaim pled sufficient merit where it averred
6 damages that were “costs incurred defending [the] action, which would not exist but
7 for” a suit filed in breach of the contracts). The Federal Circuit has recognized the
8 same point. *See Taurus IP, LLC v. DaimlerChrysler Corp.*, 726 F.3d 1306, 1341-43
9 (Fed. Cir. 2013) (finding attorneys’ fees available as damages for the pursuit of a
10 patent suit in breach of warranty).

11 Cox’s counterclaims are, both generally and in their particulars, precisely the
12 type of claims and “injuries that have a close relationship to harms traditionally
13 recognized ‘as providing a basis for a lawsuit in American courts’ may be considered
14 ‘concrete for purposes of Article III [].’” *Safari*, 2023 WL 5506014, at *5 (alteration
15 in original). MaxLinear’s Motion should thus be denied.

16 **4. Cox’s Counterclaims are Ripe**

17 MaxLinear’s ripeness argument once again ignores the actual pleadings and
18 claims, and is legally flawed. As a preliminary matter, “[t]he constitutional
19 component of ripeness is synonymous with the injury-in-fact prong of the standing
20 inquiry.” *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1094 n.2 (9th Cir.
21 2003) (citation omitted). MaxLinear raises only this aspect of ripeness. *See* DE 335
22 at 20 (arguing “Article III standing and ripeness”). Yet, as established above, the
23 counterclaims present issues that “are definite and concrete, not hypothetical or
24 abstract.” *Id.* Moreover, at its core, the ripeness doctrine “is designed ‘to prevent the
25 courts, through avoidance of premature adjudication, from entangling themselves in
26 abstract disagreements over administrative policies, and also to protect … agencies
27 from judicial interference until an administrative decision has been formalized and its
28 effects felt in a concrete way by the challenging parties.’” *Safer Chems., Healthy*

1 *Families v. EPA*, 943 F.3d 397, 411 (9th Cir. 2019) (alteration in original) (citation
2 omitted). There is accordingly no ripeness issue.

3 MaxLinear grounds its ripeness arguments on asserting there are future
4 contingencies and ignoring the actual pleadings. Both propositions are wrong.

5 The counterclaims show, for example, that MaxLinear was required to hold in
6 confidence the MoCA standards (DE 266-1, at ¶¶ 544-47), precisely because MoCA
7 participants needed to ensure they could grant relevant licenses (*id.*, ¶¶ 547-50). Yet,
8 induced by millions in payments, MaxLinear breached these confidentiality
9 obligations and provided Entropic the MoCA standards that form the basis of
10 Plaintiff's infringement claims. (*Id.*, ¶¶ 568-70). There is nothing contingent or
11 speculative about these claims. *See Metro. Transp. Com'n v. Motorola, Inc.*, 342
12 Fed.App'x. 269, 271 (9th Cir. 2009) (breach claim ripe where plaintiff "alleged a
13 present breach of a contractual obligation and ... present damage as a result of the
14 alleged failure to provide a Letter of Credit").

15 Nor is there anything contingent in connection with MaxLinear's breach of the
16 MoCA requirements concerning essential patents. The counterclaims establish that
17 MaxLinear knew, and publicly represented, that "our core home networking
18 technology is a primary component of the MoCA specification," which meant "we
19 are required to license portions of this technology to other MoCA members," precisely
20 because of the IPR Policy. (*Id.*, ¶ 533). Likewise, Entropic sent correspondence
21 representing that its MaxLinear-originated patents were essential to MoCA. (*Id.*, ¶
22 564). It then filed a complaint asserting the patents were essential to the confidential
23 MoCA standards MaxLinear provided. (*Id.*, ¶¶ 563, 569). Given these averments, the
24 breach of the IPR Policy occurred upon transfer of the patents to Entropic. (*Id.*, ¶¶
25 565-67).

26 MaxLinear says the dispute over whether the patents are, in fact, essential
27 makes the claims too speculative and contingent to be ripe. (DE 335 at 20).
28 MaxLinear's understanding of ripeness contradicts, and would overwrite, Fed. R. Civ.

1 P. 8(d)(2), which expressly allows for “2 or more statements of a claim or defense
2 alternatively or hypothetically” and states “the pleading is sufficient if any one of
3 them is sufficient.” Courts have specifically applied this rule to FRAND breach
4 claims, including in denying ripeness challenges. *See TCL Commc'n's Tech. Holdings*
5 *Ltd v. Telefonaktiebolaget LM Ericsson*, 2014 WL 12588293, at *4 (C.D. Cal. Sept.
6 30, 2014) (denying motion to dismiss because TCL could both argue that “patents are
7 not standard essential while reserving the right to pay the FRAND rate should the
8 Court ultimately determine otherwise”); *Realtek Semiconductor Corp.*, 2012 WL
9 4845628, at *5-6 (rejecting ripeness challenge to FRAND breach of contract claims
10 because “Realtek can simultaneously pursue a determination of the RAND royalty
11 rate while denying infringement or asserting invalidity, even though those issues may
12 ultimately obviate the need for a license”). Cox can likewise simultaneously deny
13 infringement while pursuing a breach of contract claim should the patents be deemed
14 essential.

15 Finally, MaxLinear nowhere claims that the ripeness doctrine somehow
16 precludes the declaratory judgment count. Nor can it. Cox has now been sued, for
17 what Entropic’s disclosure in this case claims would be hundreds of millions in
18 damages. The counterclaims plausibly establish an immediate and concrete dispute
19 over who actually owns the asserted patents and the very nature of MaxLinear’s
20 continued interest in the patents should they prove essential, demands addressing
21 Cox’s claims now.

22 **B. Cox Properly Pled a Breach of Contract Claim**

23 MaxLinear’s attack on the sufficiency of Cox’s counterclaims proceeds from
24 the premise that it can recharacterize Cox’s claims and ignore the actual pleading.
25 That’s not how Rule 12 operates and, as shown below, MaxLinear’s challenges fail.

26 **1. MaxLinear’s Efforts to Avoid the Fundamentals of Its**
27 **Breach Should be Rejected**

28 The pleadings address the operative contract and privity. In its first motion and

1 brief, MaxLinear admitted that Cox attached the IPR Policy, even as it briefly
2 complained that Cox also should have referenced other MoCA agreements. On its
3 second go-round, MaxLinear admits “Cox clearly invokes its right to sue based on
4 one Cox entity’s membership in MoCA and the IPR Policy,” but complains about the
5 references to MaxLinear’s agreements. (DE 335 at 21). MaxLinear admittedly has all
6 the notice it needs – Cox is suing over MaxLinear’s breach of the IPR Policy, which
7 is binding on MaxLinear under its prior agreements.

8 The counterclaims reference to the relevant provisions of the IPR Policy alone
9 suffices, as confirmed by the very authority MaxLinear cites. For example, *12909*
10 *Cordary, LLC v. Berri*, 2023 WL 6785798, at *3 (C.D. Cal. Apr. 17, 2023), first noted
11 that a party may either plead a contract’s terms or attach same, and then went on to
12 explain that, in the first scenario, a party “need not lay out detailed terms of the alleged
13 agreement. Instead, Cross-Complainants need only plead a ‘short and plain statement
14 of the claim,’ Fed. R. Civ. P. 8(a)(2), that ‘give[s] [Cordary] fair notice of what the ...
15 claim is and the grounds upon which it rests.’” *Id.* (alterations in original) (citation
16 omitted). The only defect the Court went on to identify in the pleading was the failure
17 to “sufficiently plead the contractual terms of the ostensible agreement by Cordary to
18 assume” the relevant contract. *Id.* The key is to aver the **material** terms – such as “the
19 relevant substantive terms of the Agreement.” *Id.* (citation omitted); *see also Sweden*
20 *v. Melius*, 2015 WL 7573622, at *4 (C.D. Cal. Nov. 25, 2015) (holding that, while
21 complaint should “identify the provision of the contract breached,” a plaintiff “need
22 not lay out the terms of the alleged agreement in its Complaint”).

23 The counterclaims here quote and plead the material terms of the IPR Policy,
24 which is all that is required as MaxLinear admits in its request for judicial notice. (DE
25 323 at 3 (citing *Bella+Canvas, LLC v. TSC Apparel, LLC*, 2021 WL 8134400, at *2
26 (C.D. Cal. Jan. 5, 2021) (Holcomb, J.) for the “holding that the Plaintiff must attach
27 a copy of the alleged contract, **quote from the contract, or adequately plead** the
28 terms.”) (emphasis added). MaxLinear nonetheless complains that the IPR Policy is

1 not reattached, per the Local Rules. Counsel for Cox apologizes for that clerical
2 oversight, but it is immaterial where the counterclaims recite the relevant provisions
3 as the cases require. MaxLinear nowhere suggests that a relevant contractual term was
4 omitted.³ Likewise, as to MaxLinear’s complaint that Cox did not “attach the MoCA
5 ByLaws and other ‘Applicable Agreements’” referenced” in the IPR Policy (DE 335
6 at 22), the full terms of documents are immaterial to the counterclaims for the same
7 reasons discussed above. Cox nonetheless identified those materials in its Amended
8 Counterclaims, at 538, note 10, and elected to reproduce any of the pertinent
9 provisions. MaxLinear has now asked the Court to take judicial notice of these very
10 same materials, consisting of Cox’s Promoter Member Agreement (which includes as
11 an exhibit the MoCA ByLaws). *See* DE 323; Ex. A (Promoter Agreement at 8-20;
12 ByLaws at 21-54)). Cox does not oppose that request and MaxLinear’s complaints
13 are, at the least, moot. On the merits, the counterclaims aver all the facts required to
14 address MaxLinear’s fundamental breach of contract.

15 2. The Pleadings Addressed Cox’s Performance

16 The counterclaims specifically address Cox’s performance of its obligations
17 under its MoCA agreement. (DE 266-1, ¶ 525). MaxLinear does not argue otherwise,
18 and these averments suffice as a matter of law to plead a breach claim.

19 Nor is that outcome changed by MaxLinear repeating its claim that Cox did not
20 present a written request and did not address the timing of the relevant draft
21 deliverables. As established above, those claims are incorrect and irrelevant. First,
22 Cox did make written requests, even though as a former member it need not do so. As
23 detailed above, it has performed all it needs to in order to obtain the benefit of the IPR
24 Policy. Second, MaxLinear repeats its claim that the pleadings do not address the

25 ³ To the extent needed, the Court should incorporate these documents filed with Cox’s
26 original counterclaim—MoCA IPR Policy (DE 94-1), Patent Assignment filed with
27 U.S. Patent Office (DE 94-2)—consistent with multiple cases. *E.g., United States v.*
28 *Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003); *Schuman v. Microchip Tech. Inc.*, 372 F.
Supp. 3d 1054, 1057 n.2 (N.D. Cal. 2019); *DTS, Inc. v. Nero AG*, 2015 WL 12829611,
at *2 (C.D. Cal. Oct. 21, 2015). Likewise, the Court can and should simply take
judicial of the IPR Policy as filed with the original counterclaims based on the
authority described in DE 323.

1 timing of draft deliverables, which is incorrect for the same reasons discussed *supra*.
2 In short, Cox appropriately pled its performance, and its breach claim is proper.

3 **3. The Pleadings Appropriately Identified the Breaches**

4 MaxLinear's challenges to Cox's breach averments are either a facial attack on
5 the pleadings, wholly-ignoring the requirement that the pleadings must be accepted
6 as true, or, again, simply ignore the relevant averments.

7 The counterclaims detail how the MoCA IPR Policy evolved to address patent
8 hold-up, including hold-up by strangers to the standards setting process. (DE 266-1,
9 ¶¶ 540-543). Because of well-known concerns with non-practicing entities acquiring
10 and asserting standard essential patents, the IPR Policy detailed multiple "provisions
11 to minimize the potential for patent hold-up or patent litigation by strangers to
12 MoCA." (*Id.*, ¶ 544). Those provisions included requirements that the standards
13 themselves would remain confidential to MoCA members. (*Id.*, ¶¶ 544-46). The IPR
14 Policy specified that the relevant patents necessary for the standards would be owned
15 by the proper Alliance Party. (*Id.*, ¶ 547). While an Alliance Party could transfer such
16 patents, they warranted and covenanted that such transfer would never be "for the
17 purpose of circumventing the obligation to grant licenses contained in this IPR
18 Policy." (*Id.*, ¶ 548). Any transfer required the relevant agreement to acknowledge the
19 transferred patent was "subject to existing licenses and obligations to license imposed
20 on the Alliance Party by this Agreement and the Alliance Bylaws" under the IPR
21 Policy. (*Id.*, ¶ 549). Thus, *either* MaxLinear must continue to own the relevant patents
22 *or* it must "retain the right to grant any licenses for essential patents via multiple
23 provisions" in the IPR Policy. (*Id.*, ¶ 550).

24 Under these clauses, MaxLinear plainly warranted and covenanted that it would
25 maintain the right to grant licenses under the IPR Policy. Such promises were plainly
26 looking to the future and meant that, while MaxLinear could transfer patents, it had
27 to maintain its right to grant essential patent licenses. *See Ticketmaster L.L.C. v.*
28 *Prestige Ent., Inc.*, 306 F. Supp. 3d 1164, 1172-73 (C.D. Cal. 2018) (under California

1 law covenant is promise to do or refrain from doing specific act). MaxLinear now
2 pretends these averments, and its contractual obligations, do not exist. It facially
3 attacks the pleadings, claiming that Section 5.1.2 of the IPR Policy allows it to transfer
4 its patents and thus there can be no breach. (*See* DE 335 at 24-25). MaxLinear's facial
5 attack is legally improper on a motion to dismiss that assumes the truth of Cox's
6 pleadings, not MaxLinear's attorney arguments. It is also simply incorrect. Section
7 5.1.2 plainly says that any sale or transfer of patents with an Essential Patent Claim
8 (A) "shall be subject to the terms in this IPR Policy" and (B) must "include[] a
9 provision that such transfer ... is subject to existing licenses and obligations to
10 license...." In other words, all the provisions Cox relies on apply and Cox properly
11 pled MaxLinear breached when it transferred in a way that violated its obligations.

12 MaxLinear next attempts to set up a false conflict between the averments that
13 MaxLinear improperly attempted to assign any essential MoCA patents free of any
14 encumbrances, and the averment that [REDACTED]
15 [REDACTED]. (DE 335 at 25). But
16 informing Entropic of the existence of the *standards* has nothing to do with ensuring
17 compliance with the IPR Policy. Likewise, MaxLinear says Cox's allegations of
18 breach are implausible because [REDACTED]
19 [REDACTED]
20 [REDACTED]. (DE 335 at
21 25). But that is entirely consistent with, and demonstrates the problems with,
22 MaxLinear's breaching conduct – it did not inform Entropic of the full scope of
23 obligations imposed by the IPR Policy, which goes far beyond requiring some
24 "general" RAND commitment. Likewise, MaxLinear neither retained rights to satisfy
25 the continuing obligations imposed by the IPR Policy nor met the specific obligations
26 of the IPR Policy's transfer provisions.

27 Finally, MaxLinear says the averments showing how it breached its
28 confidentiality obligations are insufficient because Cox does not identify any of Cox's

1 confidential information in the MoCA standards, that Cox cannot enforce such
2 obligation, and that Cox does not plead timing details. But the latter need not be pled,
3 and MaxLinear just ignored, again, the actual averments. Paragraph 544 pleads that
4 the MoCA standards themselves were confidential to the MoCA members, while
5 paragraph 546 pleads that “Confidential Information” included materials so
6 “designated in writing as confidential” by MoCA and “[a]ll Alliance Draft
7 Deliverable(s), Approved Draft Deliverable or Deliverables,” i.e., the standards
8 themselves. (DE 266-1, ¶¶ 544, 546). Cox then quoted from those same standards,
9 including the notice that “[t]his document and each element of this document are the
10 Confidential Information of ... MoCA and” its members and both “may enforce such
11 obligations of confidentiality directly.” (*Id.*, ¶ 546). In short, the MoCA standards are
12 confidential to the MoCA Alliance itself, and Cox can enforce MaxLinear’s breach
13 of confidentiality.

14 **C. Cox’s Declaratory Judgment States a Cognizable Claim**

15 The counterclaims’ averments support a grant of declaratory judgment on the
16 grounds that the patent assignments to Entropic are void. To begin, MaxLinear argues
17 that Cox’s declaratory judgment claim should be dismissed because it is duplicative
18 of Cox’s breach of contract claim, and that claim is deficient. As discussed above,
19 however, Cox’s breach of contract claim has been sufficiently pled.

20 In any event, it is incorrect to state that Cox’s claim for declaratory judgment
21 is “nothing more than a duplication of the breach claim.” (DE 335 at 27). Breach of
22 contract and declaratory judgment are different claims seeking two different types of
23 remedies, and as such are not duplicative. *See Steen v. Am. Nat’l Ins. Co.*, 609 F. Supp.
24 3d 1066, 1073 (C.D. Cal. 2022) (rejecting argument that breach of contract and
25 declaratory judgment claims were duplicative because it “ignores the alleged future
26 uncertainty that declaratory judgment would remedy that would not be remedied by
27 damages for breach of contract”). Declaratory relief is appropriate “(1) when the
28 judgment will serve a useful purpose in clarifying and settling the legal relations in

1 issue, and (2) when it will terminate and afford relief from the uncertainty, insecurity,
2 and controversy giving rise to the proceeding.” *Guerra v. Sutton*, 783 F.2d 1371, 1376
3 (9th Cir. 1986) (citation omitted).

4 Here, the issues are particularly unsettled and in need of clarification. Entropic
5 asserts infringement claims based on patents obtained through assignments that are
6 void in view of the IPR Policy. MaxLinear never disputes that declaratory judgment
7 in Cox’s favor on this issue would clarify and settle issues—including Entropic’s
8 ability to make infringement claims. Thus, Cox’s counterclaim is appropriate.

9 MaxLinear also argues that Cox—and in particular the Cox Affiliates—are not
10 intended third party beneficiaries under the IPR Policy or Promoter Agreement and
11 thus do not have standing for the declaratory judgment claim. This is also incorrect.
12 As discussed above, Cox has sufficiently pled that the Cox Affiliates, are intended
13 beneficiaries of the IPR Policy and may, including through their affiliate Cox
14 Communications, reap the benefits of any RAND commitment.

15 But independently, the Cox Affiliates were sued by Entropic and are entitled to
16 challenge its standing to assert the patents in view of the violation of the clear
17 provisions in the IPR Policy. And, in any event, Cox Communications is a signatory
18 to the Promoter Agreement and plainly may make that claim, especially where it too
19 has been accused by Entropic of infringing patents conveyed by void assignments.
20 Thus, there is “a case of actual controversy” involving Entropic, MaxLinear, and Cox,
21 including the Cox Affiliates, and case law recognizes that “[i]t is well established that
22 all entities having substantial rights in the patent must join or be joined in
23 infringement litigation....The purpose of this rule is to prevent the possibility of
24 multiple suits against the same defendant.” *Viskase Corp. v. Am. Nat. Can Co.*, 261
25 F.3d 1316, 1328 (Fed. Cir. 2001).

26 Cox’s declaratory judgment action removes that uncertainty and Cox has
27 standing to bring a declaratory judgment claim. 28 U.S.C. § 2201; *see also*
28 *Chesebrough-Pond’s, Inc. v. Faberge, Inc.*, 666 F.2d 393, 397 (9th Cir. 1982) (finding

1 requirements for bringing declaratory judgment claim are met if there is at least “real
2 and reasonable apprehension” that infringement action will be filed).

3 **D. Cox’s Unjust Enrichment Claim is Both Proper Under California
4 Law and Appropriately Pled**

5 MaxLinear argues that Cox cannot state a claim for quasi-contract or unjust
6 enrichment for several reasons, all of which are faulty.

7 **1. California Recognizes Unjust Enrichment and Federal Rules
8 Allow Alternative Pleading**

9 MaxLinear’s position that there is no unjust enrichment claim in California is
10 incorrect. *Stark v. Patreon, Inc.*, 635 F. Supp. 3d 841, 857 (N.D. Cal. 2022), held that
11 “[t]he California Supreme Court’s decision in *Hartford Cas. Ins. Co. v. J.R. Mktg.*,
12 *L.L.C.*, 61 Cal. 4th 988, 1000 (2015)] indicates that the Ninth Circuit was incorrect to
13 conclude that no cause of action of unjust enrichment exists under California law.” It
14 thus concluded “that such a claim exists.” *Id.* But as *Stark* also recognized, “[i]n any
15 event...a court may construe a purportedly non-existent claim for unjust enrichment
16 as a valid ‘quasi-contract claim seeking restitution.’” *Id.* (citations omitted); *see also*
17 *ESG Cap. Partners, LP v. Stratos*, 828 F.3d 1023, 1038 (9th Cir. 2016) (“[T]his
18 Circuit has construed the common law to allow an unjust enrichment cause of action
19 through quasi-contract” (citation omitted)); *Safari*, 2023 WL 5506014, at *3 (holding
20 that plaintiff “may plead unjust enrichment as a ‘quasi-contract claim seeking
21 restitution’”). Under *Hartford* and *Stark*’s analysis of same, Cox’s unjust enrichment
22 claim is proper. But, at minimum, Cox has pled an acceptable “quasi-contract” claim.

23 MaxLinear’s assertion that Cox cannot plead in the alternative a quasi-contract
24 while it pleads breach of contract ignores the fact that federal law controls procedural
25 issues. *See Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 92 (1938); *In re Exxon Valdez*,
26 484 F.3d 1098, 1100 (9th Cir. 2007). Each of MaxLinear’s cited cases apply
27 California *state* law in determining whether a party can plead both quasi-contract and
28 breach of contract claims. *See Cal. Med. Ass’n, Inc. v. Aetna U.S. Healthcare of Cal.*,

1 *Inc.*, 114 Cal. Rptr. 2d 109, 125 (Cal. 2001); *Mohandas v. Wells Fargo Bank, N.A.*,
2 2023 WL 5506004, at *18 (C.D. Cal. July 13, 2023); *Klein v. Chevron U.S.A., Inc.*,
3 137 Cal. Rptr. 3d 293, 331-32 (Cal. 2012).⁴

4 But Fed. R. Civ. P. 8(d)(3) clearly states that “[a] party may state as many
5 separate claims or defenses as it has, regardless of consistency.” As this issue deals
6 with “the procedural rule of alternative pleading,” federal law must apply, and federal
7 law permits alternative pleadings. *Intelligent Mgmt. Sols., Inc. v. Crown Glendale*
8 *Assocs, LLC*, 2013 WL 12130317, at *2 n.2 (C.D. Cal. Feb. 20, 2013). Indeed, this
9 District holds that “Rule 8(d) of the Federal Rules of Civil Procedure expressly
10 permits a plaintiff to plead claims in the alternative, and courts...have permitted
11 unjust enrichment and breach of contract claims to proceed simultaneously.” *Longest*
12 *v. Green Tree Servicing LLC*, 74 F. Supp. 3d 1289, 1302 (C.D. Cal. 2015). Likewise,
13 *Safari* held that pleading an unjust enrichment claim “is permitted even if the party
14 inconsistently pleads a breach of contract claim that alleges the existence of an
15 enforceable agreement.” 2023 WL 5506014, at *13 (citation omitted). Thus, Cox is
16 permitted to state alternative claims at this stage.

17 2. Cox Pled Sufficient Allegations for Unjust Enrichment

18 MaxLinear also argues that Cox has failed to meet Rule 9(b)’s pleading
19 standards with respect to the quasi-contract claim. This argument is irrelevant in view
20 of *Hartford* and *Stark*, *supra*, and even if a “quasi-contract” claim must be stated, it
21 is also incorrect. MaxLinear claims that Cox has not precisely identified which and
22 how statements were false or misleading, or when they occurred. But Cox’s pleading
23 satisfies Rule 9(b), which merely requires that “a party must state with particularity
24 the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other
25 conditions of a person’s mind may be alleged generally.” Fed. R. Civ. P. 9(b).

26 ⁴ The holdings in these cases are also based on *Bechtel v. Chase*, where the court
27 found that a plaintiff could not *recover* for both breach of contract and an implied
28 contract under California state law. 156 Cal. 707, 711 (1909). *Bechtel* was before the
Erie doctrine and, in any case, was in state court, so it did not deal with whether a
party can plead claims for both breach of contract and quasi-contract under applicable
federal procedural law.

1 MaxLinear's own caselaw, *Ebeid ex rel. United States v. Lungwitz*, explains
2 that to meet Rule 9(b), a complaint need merely make "with particularity allegations
3 that provide a reasonable basis to infer" a false or misleading statement, or "provide
4 enough detail 'to give [Defendant] notice of the particular misconduct which is
5 alleged to constitute the fraud charged so that [she] can defend against the charge and
6 not just deny that [she has] done anything wrong.'" 616 F.3d 993, 998-99 (9th Cir.
7 2010) (second and third alterations in original) (quoting *United States ex rel. Lee v.*
8 *SmithKline Beecham, Inc.*, 245 F.3d 1048, 1051-52 (9th Cir. 2001)). Thus, Rule 9(b)
9 only requires that Cox's pleadings provide enough detail to put MaxLinear on notice
10 of the misconduct Cox claims is fraudulent, rather than requiring the precise
11 statements that MaxLinear seeks. The counterclaims meet this standard. (DE 266-1,
12 ¶¶ 532-33, 589-92).

13 Even if Rule 9(b) did require Cox to precisely identify which statements were
14 false or misleading, how they could be false or misleading, or when they occurred,
15 Cox's allegations meet those requirements. The counterclaims state that "MaxLinear
16 made false representations, including misrepresenting to the public via its securities
17 filings that any of its essential patents were encumbered by the MoCA IPR Policy"
18 and provide details such as the exact date and language used in the security filings.
19 (DE 266-1, ¶¶ 533, 590). Thus, Cox did identify false and misleading statements and
20 when they were made (the content and date of the filings).

21 The false and misleading nature of those statements is further demonstrated by
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] (*Id.*, ¶ 590). In fact, despite MaxLinear's public representations,
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED] (*Id.*, ¶¶ 556, 566). This is just one of the many examples of Cox's

1 counterclaims clearly identifying specific statements made by MaxLinear that were
2 false or misleading, how the statements were false or misleading, and when the
3 statements were made.

4 Contrary to MaxLinear's assertions, the counterclaims describe the benefits
5 conferred and unjustly retained by MaxLinear. The counterclaims explain how MoCA
6 support helped MaxLinear defeat alternative technology so Cox and others would
7 adopt MoCA (*id.*, ¶¶ 532-33), and how Cox joined and supported MoCA (*id.*, ¶¶ 552).
8 As Paragraph 553 further details, "MaxLinear itself benefitted from Cox's
9 participation and support in MoCA, including by having Cox help expand the market
10 for MoCA and approve standards while acting as a Board member. The benefits
11 MaxLinear received from Cox's participation in MoCA included Cox's feedback
12 concerning standards and approval of standards, Cox's consideration and adoption of
13 any MoCA equipment, MaxLinear's ability to work with vendors of Cox on
14 interoperability and other issues critical to MaxLinear's own products, and
15 MaxLinear's ability to market and offer to sell MoCA equipment to Cox." These
16 pleadings suffice and MaxLinear's complaints are meritless.

17 For at least these reasons, Cox has sufficiently pled a claim for quasi-contract
18 or unjust enrichment.

19 **IV. IN THE ALTERNATIVE, THE COURT SHOULD GRANT COX
20 LEAVE TO AMEND**

21 MaxLinear's arguments misstate the law and ignore the many factual
22 allegations in Cox's counterclaims. But if the Court is inclined to dismiss any claims
23 Cox requests that it be given leave to amend the counterclaims to address any
24 deficiencies. There is a strong public policy in favor of permitting amendment, and
25 the Ninth Circuit has made clear that "Rule 15's policy of favoring amendments to
26 pleadings should be applied with 'extreme liberality.'" *Bowles v. Reade*, 198 F.3d
27 752, 757 (9th Cir. 1999). Without specifically finding undue delay, bad faith, dilatory
28 motive, repeated failure to cure deficiencies by prior amendments, prejudice to the

1 opposing party, or futility of amendment, it is an abuse of discretion to grant
2 leave to amend a complaint. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Moore v.*
3 *Kayport Package Express, Inc.*, 885 F.2d 531, 538 (9th Cir. 1989).

4 Disregarding these standards, MaxLinear makes a specific request for dismissal
5 without leave only as to the breach of contract claim. (DE 335 at 30-31). But the
6 relevant factors do not justify even this limited request. Cox did not delay and has not
7 acted in bad faith or with dilatory motive. Courts in this district have found no undue
8 delay even where, unlike here, a party seeks to amend their pleading just months
9 before the close of discovery. *See Am. Honda Motor Co., Inc. v. LKQ Corp.*, 2022
10 WL 4596559, at *3 (C.D. Cal. Aug. 11, 2022). Contrary to MaxLinear’s assertion,
11 Cox has only amended its counterclaims once, and it did so in good faith. Moreover,
12 the Court has not ruled that any deficiencies exist in Cox’s counterclaims to date. This
13 factor weighs in favor of granting amendment and/or supplementation.

14 MaxLinear bears the burden of showing any specific prejudice or futility. *DCD*
15 *Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987). Its general allegations
16 of prejudice are insufficient because “bald assertions of prejudice cannot overcome
17 the strong policy reflected in Rule 15(a) to facilitate a proper disposition on the
18 merits.” *Quidel Corp. v. Siemens Med. Sols. USA, Inc.*, 2019 WL 1409854, at *3 (S.D.
19 Cal. March 27, 2019). “[A]mendment is futile when no set of facts can be proved
20 under the [proposed] amendment to the pleadings that would constitute a valid and
21 sufficient claim or defense.” *See Am. Honda Motor*, 2022 WL 4596559, at *3 (citation
22 omitted). That is not the case here, where *all* of the issues identified in MaxLinear’s
23 motion amount, at most, to assertions that it cannot understand Cox’s claims without
24 additional words to further address elements of the claims.

25 **V. CONCLUSION**

26 For all of these reasons, Cox requests that the Court deny MaxLinear’s Motion.

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